Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Petition for Declaratory Ruling	)	WC Docket No. 18-221
Regarding Two-Stage Traffic	)	

REPLY COMMENTS OF PEERLESS NETWORK, INC.

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I. INTRODUCTION AND SUMMARY

Peerless Network, Inc. ("Peerless"), by its attorneys, submits these reply comments in opposition to the Petition for Declaratory Ruling ("Petition") filed by MCI Communications Services, Inc. d/b/a Verizon Business Services, Verizon Services Corp., and Verizon Select Services, Inc. (collectively, "Verizon") in the above-captioned proceeding.[1]

Not surprisingly, the only commenter to support Verizon's Petition is AT&T Services, Inc. ("AT&T"), another large interexchange carrier ("IXC") often involved in intercarrier compensation disputes concerning switched access charges owed to local exchange carriers ("LECs") pursuant to tariff.[2] AT&T generally repeats Verizon's claims that traffic delivered to Internet Protocol ("IP")-enabled platforms, including calls to so-called two-stage dialing platforms, does not terminate at the platforms and therefore LECs may not assess tariffed applicable (end office or tandem) terminating switched access charges for delivering such traffic.[3] In doing so, AT&T similarly ignores longstanding Commission precedent finding that

[1] Verizon Petition for Declaratory Ruling Regarding Two-Stage Traffic, WC Docket No. 18-221 (June 15, 2018) ("Petition"). *See Pleading Cycle Established for Verizon Petition for Declaratory Ruling*, WC Docket No. 18-221, DA 18-748 (July 20, 2018).

[2] Comments of AT&T, WC Docket No. 18-221 (Aug. 20, 2018) ("AT&T Comments"). *See* Comments of O1 Communications, Inc. and Peerless Network, Inc., WC Docket No. 10-90, CC Docket No. 01-92, 1-3 (June 18, 2018) (discussing intercarrier compensation disputes involving AT&T).

[3] AT&T Comments at 2-7. AT&T disagrees with Verizon that this issue only involves traffic where the calling party places a standard long-distance call to reach a platform. *Id.* at 2, n.6 (citing Petition at 3, n.5). However, as

IP-enabled platforms represent end users for the purpose of determining switched access charges. As Peerless explained in its initial comments, the "end-to-end" approach advocated by Verizon and AT&T was adopted before the advent of IP-enabled services and does not govern the assessment of switched access charges for traffic delivered to IP-enabled platform end users.[4] Peerless and its partner providers of Voice over Internet Protocol ("VoIP") services terminate traffic to IP-enabled platform end users under tariff on behalf of IXCs like Verizon and AT&T, and are entitled to receive tariffed terminating switched access charges in return. Thus, AT&T's reliance on *Broadvox* is misplaced.[5] In addition, AT&T fails to explain how the end-to-end approach covers the wide variety of IP-enabled platforms to which LECs may deliver traffic (both now and in the future) and fails to address the administrative challenges inherent in claiming an exemption to access charges for certain calls to platforms, but not others. As a result, instead of resolving intercarrier compensation disputes, granting the Petition as AT&T requests will only prolong current litigation and engender future disagreements. The Commission therefore should confirm that traffic delivered to an IP-enabled platform terminates at the platform and LECs may collect their applicable tariffed terminating switched access charges for delivering such traffic.[6]

explained below, IP-enabled platforms represent end users for the purpose of determining switched access charges regardless of whether the calling party initially places a local or long-distance call.

[4] Comments of Peerless Network, Inc., WC Docket No. 18-221, 6-18 (Aug. 20, 2018) ("Peerless Comments").

[5] AT&T Comments at 4-6 (citing *Broadvox-CLEC, LLC v. AT&T Corp.*, 184 F. Supp. 3d 192 (D. Md. 2016) ("*Broadvox*")).

[6] As discussed below, LECs should at least be entitled to collect tandem terminating switched access charges for delivering traffic to IP-enabled platforms.

II. DISCUSSION

A. AT&T Fails to Address Longstanding Commission Precedent Demonstrating that IP-Enabled Platforms Represent End Users for the Purpose of Assessing Switched Access Charges

Echoing Verizon, AT&T asserts that the Commission treats traffic delivered to an IP-enabled platform as a single end-to-end call that terminates not at the platform, but rather at the destination of the second call originated from the platform.[7] That is incorrect. As Peerless previously demonstrated, the Commission has determined that the end-to-end approach does not apply to traffic delivered to IP-enabled platforms, which represent end users for the purpose of assessing switched access charges under the Commission's enhanced service provider ("ESP") exemption.[8]

The Commission has long distinguished between legacy "basic" telecommunications services providers and ESPs,[9] with ESPs offering services that act on the "code, protocol or similar aspects" of transmitted information or involve caller interaction with information stored at the ESP.[10] AT&T does not contest that, under the ESP exemption, "enhanced service providers are *treated as end users* for purposes of applying access charges."[11] Nor do AT&T's comments address the fact that, in the 35 years since the adoption of the ESP exemption, the Commission has repeatedly confirmed, as recently as the Commission's landmark decision to

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[7] AT&T Comments at 2-8. As discussed below, AT&T does not address the treatment of traffic delivered to IP-enabled platforms where no second call is made.

[8] Peerless Comments at 6-14 (citing *MTS & WATS Mkt. Structure*, Memorandum Opinion and Order, 97 FCC 2d 682, ¶ 83 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Serv. Providers*, Order, 3 FCC Rcd 2631, ¶ 1 (1988) ("*ESP Order*")).

[9] *Id.* at 7-9 (citing *Regulatory and Policy Problems Presented by the Interdependence of Computer and Commc'ns Servs. and Facilities*, Final Decision and Order, 28 FCC 2d 267 (1971) ("*Computer I*"); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 FCC 2d 384 (1980) ("*Computer II*")).

[10] *Computer II* at ¶ 5.

[11] *ESP Order* at ¶ 2, n.8 (emphasis added).

transform intercarrier compensation, that ESPs, including internet service providers ("ISPs"), represent end users that purchase exchange access services from LECs in order to receive terminating traffic from IXCs and others.[12] LECs therefore are entitled to collect applicable terminating switched access charges from IXCs and others through their tariffs for delivering traffic to IP-enabled platforms.

The end user status of ESPs necessarily results from the critical functional differences between legacy telecommunications services and ESPs. As the Commission previously illustrated, "[w]hereas circuit-switched networks generally reserve dedicated resources along a path through the network, IP networks route traffic *without requiring the establishment of an end-to-end path*."[13] The mere fact that an IP-enabled platform may "originate[] further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP."[14] The origination of a second call from an IP-enabled platform does not signify a continuation of the first call to the platform because that first call already terminated at the platform called by the consumer.[15]

AT&T, like Verizon, misapplies the limited nature of the end-to-end analysis. The end-to-end approach has been used by the Commission to determine "whether a call is within its

[12] *See, e.g., Connect Am. Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 957 (2011) (stating that the Commission "always recognized that information-service providers . . . were obtaining exchange access from the LECs") ("*Transformation Order*"); *Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶ 57 (2001) ("[T]he LEC-provided link between an end-user and an ISP is properly characterized as interstate access.") (emphasis removed); *GTE Tel. Operating Cos.*, Memorandum Opinion and Order, 13 FCC Rcd 22466, ¶ 21 (1998) ("The Commission traditionally has characterized the link from an end user to an ESP as an interstate access service.").

[13] *IP Enabled Servs.*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 8 (2004) (emphasis added).

[14] *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 7 (D.C. Cir. 2000) ("*Bell Atlantic*").

[15] AT&T describes the IP-enabled platform as the "LEC's platform." AT&T Comments at 3. AT&T is mistaken. Peerless does not maintain or control any IP-enabled platforms. Instead, Peerless terminates calls dialed to telephone numbers assigned to its VoIP partners and delivers traffic to IP-enabled platforms on behalf of its customers.

interstate *jurisdiction*," not to determine the assessment of switched access charges for traffic delivered to IP-enabled platforms under tariff.[16] While Verizon and AT&T argue that the end-to-end approach should apply broadly to all two-stage dialing platforms, nothing contained in Commission precedent shows "why viewing these linked telecommunications as continuous works for purposes of reciprocal compensation."[17] Thus, the Commission should dismiss attempts by the IXCs to graft the legacy end-to-end approach for basic telecommunications services onto Commission rulings concerning the IP-enabled platforms actually relevant to the Petition.

Like Verizon, AT&T does not discuss the ESP exemption or its application to IP-enabled services in its comments. Instead, AT&T primarily relies on Commission decisions concerning legacy conferencing and calling card platforms. For example, AT&T cites *Qwest Communications* to argue that traffic delivered to an IP-enabled platform does not terminate at the platform.[18] But as Peerless previously noted, the Commission in *Qwest Communications* found that the legacy conference calling platforms at issue were end users that received terminating switched access services from the LEC.[19] The Commission not only concluded that the traffic terminated at the platforms, but also that the LEC properly charged the IXC for providing terminating switched access services.[20] Instead of establishing a general precept favoring an end-to-end approach, as AT&T argues, *Qwest Communications* actually shows that the appraisal of whether a particular platform represents an end user under tariff is "fact-driven,"

[16] *Bell Atlantic*, 206 F.3d at 3 (emphasis in original).

[17] *Id.* at 7.

[18] AT&T Comments at 3 (citing *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 17973 (2007) ("*Qwest Communications*")).

[19] Peerless Comments at 15 (citing *Qwest Communications* at ¶¶ 34-39).

[20] *Qwest Communications* at ¶¶ 38-39.

requiring a detailed examination of the services provided by the platform and the agreements governing delivery of traffic to the platform.[21] AT&T's comments are devoid of such an examination.

AT&T refers to the Commission's 2005 decision regarding AT&T's own prepaid calling card service to assert that an end-to-end analysis applies to all two-stage dialing traffic, despite the fact that the call is first routed to an IP-enabled platform.[22] However, as AT&T should be well aware, the Commission concluded that AT&T's calling card offering was not an enhanced service, but rather its own basic long distance telecommunications service provided to its own end user long distance customers that did not involve caller interaction with information stored at the platform.[23] Not surprisingly, AT&T in that case, as it is here, was attempting to avoid the payment of access charges to LECs that were providing access services to AT&T. The Commission cautioned that its decision was limited to the particular retail calling card service offered by AT&T and did not establish rules of general applicability for the switched access charges associated with two-stage dialing platforms.[24] AT&T also points to the Commission's *IP-in-the-Middle Order* and the application of that decision to its IP prepaid calling card service in 2006 to allege that an end-to-end analysis applies to all calls involving prepaid calling card services, even when such calls are partly carried over the Internet.[25] AT&T once again ignores

[21] *See N. Cnty. Commc'ns Corp. v. Verizon Global Networks*, 685 F. Supp. 2d 1112, 1121 (S.D. Cal. 2010).

[22] AT&T Comments at 3 (citing *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Servs.*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826 (2005) ("*AT&T Calling Card Order*")).

[23] *AT&T Calling Card Order* at ¶¶ 17, 25-26.

[24] *See id.* at ¶ 1 ("We limit our decision in this Order to the calling card service described in AT&T's original petition.").

[25] AT&T Comments at 3 (citing *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Servs. are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) ("*IP-in-the-Middle Order*"); *Regulation of Prepaid Calling Card Servs.*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) ("*AT&T IP Calling Card Order*")).

the facts and limitations of the Commission's decisions. The *IP-in-the-Middle Order* did not involve the delivery of traffic by a LEC to a two-stage dialing platform, but rather a direct "phone-to-phone" service again offered by AT&T *as the IXC*, where the calling party placed a single call that AT&T converted to IP format as it traversed its Internet backbone before converting the call back for delivery to LECs.[26] Again as it does here, AT&T argued that it was exempt from paying access charges on those calls. The Commission concluded that users of this service only obtained "basic" voice transmission, with no net protocol conversion or interaction with stored information.[27] While it is notable that AT&T frequently claims that its long distance services are not subject to the Commission's access charge rules, the *IP-in-the-Middle Order* does not apply because that scenario also did not involve the delivery of traffic to an IP-enabled platform end user. As with its 2005 prepaid calling card decision, the Commission stressed that its findings were limited to AT&T's service and did not establish a single switched access charge regime for IP-enabled platforms.[28] In fact, the Commission explicitly reserved the right to adopt "a fundamentally different approach" to switched access charges involving IP-enabled services.[29]

The Commission's 2006 decision regarding AT&T's IP prepaid calling card service also can be distinguished from the platforms at issue in the Petition. Importantly, consumers accessed AT&T's long distance service by dialing an 8YY number.[30] But Verizon specifically restricted its Petition to situations where the calling party places a "standard long-distance call," not an

[26] *IP-in-the-Middle Order* at ¶ 1.

[27] *Id.* at ¶ 12.

[28] *Id.* at ¶ 1.

[29] *Id.* at ¶ 10. *See id.* at ¶ 2 ("We in no way intend to preclude the Commission from adopting a different approach when it resolves the *IP-Enabled Services* rulemaking proceeding or the *Intercarrier Compensation* rulemaking proceeding.").

[30] *AT&T IP Calling Card Order* at ¶ 3.

8YY or other toll-free call.[31] The Commission should not allow AT&T to expand the Petition's scope beyond the purported "controversy" or "uncertainty" raised by Verizon.[32] In any event, the Commission concluded that AT&T's service "offer[ed] the customer no capability to do anything other than make a telephone call."[33] As a result, AT&T's calling card service did not involve access to information stored at the platform or other enhanced services. AT&T should not be permitted to rewrite prior Commission decisions involving legacy telecommunications services to reach its desired conclusion regarding modern IP-enabled platforms.

B. AT&T's Reliance on *Broadvox* is Misplaced

AT&T devotes a significant portion of its comments to the *Broadvox* decision in support of the end-to-end approach.[34] AT&T's reliance on *Broadvox* is misplaced. Like Verizon and AT&T, the *Broadvox* court did not address the Commission's ESP exemption or the end user status of IP-enabled platforms. Indeed, the *Broadvox* court acknowledged that existing precedent "does not stand for the proposition that the end-to-end analysis generally applies outside the jurisdictional context."[35] Yet the *Broadvox* court erroneously dismissed such precedent and found that the Commission's long-held distinction between its jurisdictional analysis for legacy telecommunications services and its intercarrier compensation approach to IP-enabled services had no legal significance.[36]

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[31] *See* Petition at 3, n.5 ("This dispute only arises if the consumer places a standard long-distance call to reach the calling card platform.").

[32] *See* 47 C.F.R. § 1.2(a) (stating the Commission possesses the authority to "issue a declaratory ruling terminating a controversy or removing uncertainty").

[33] *AT&T IP Calling Card Order* at ¶ 43.

[34] AT&T Comments at 4-6.

[35] *Broadvox*, 184 F. Supp. 3d at 212 (citations omitted). *See id.* at 210-11 (recognizing that the *AT&T Calling Card Order* and *AT&T IP Calling Card Order* analyzed the prepaid calling card services only "for jurisdictional purposes").

[36] *Id.* at 209-14.

As explained above and in Peerless's initial comments, this conclusion cannot be correct because the Commission treats traffic delivered to IP-enabled platforms as calls terminating to end users under the ESP exemption.[37] Contrary to the *Broadvox* court's conclusion, the Commission has never specified that the end-to-end approach applies to the assessment of switched access charges for traffic delivered to IP-enabled platforms. Further, the two Commission decisions emphasized by the *Broadvox* court when reaching its conclusion did not involve IP-enabled platforms but rather 8YY services, which are not the subject of Verizon's Petition.[38] This disconnect between the Commission's analysis of legacy telecommunications services and its approach to IP-enabled services is why the Northern District of Illinois court in the underlying litigation between Peerless and Verizon found the *Broadvox* decision unconvincing.[39] The Commission similarly should be unconvinced by the *Broadvox* decision and confirm that the decision does not govern the treatment of traffic delivered to an IP-enabled platform.

Even if AT&T is right (which it is not) that the *Broadvox* court reached the correct decision, the decision does nothing to displace otherwise valid tariff provisions setting forth clear payment obligations on IXCs and others for the delivery of traffic to IP-enabled platforms. As Peerless highlighted in its initial comments, the tariff at issue in *Broadvox* did not define when a call "terminated" to an end user.[40] Peerless's tariffs do not suffer from the same deficiency, specifying that termination occurs at the "customer designated premises or point of

[37] *See* Peerless Comments at 16-17.

[38] *Broadvox*, 184 F. Supp. 3d at 213 (citing *Teleconnect Co. v. Bell Tel. Co. of Pa.*, Memorandum Opinion and Order, 10 FCC Rcd 1626 (1995); *Long Distance/USA, Inc. v. Bell Tel. Co. of Pa.*, Memorandum Opinion and Order, 10 FCC Rcd 1634 (1995)).

[39] *Peerless Network, Inc. v. MCI Commc'ns Servs., Inc.*, 2018 U.S. Dist. LEXIS 43044, *39 (N.D. Ill. March 16, 2018).

[40] Peerless Comments at 17-18 (citing *Broadvox*, 184 F. Supp. 3d at 213-17).

interconnection at which the Company's [*i.e.*, Peerless's] responsibility for the provision of service ends," and identifying ISPs, conference calling providers, and VoIP providers as types of ESP end users.[41] AT&T does not argue that the end-to-end approach should override existing tariff provisions, nor could it under the Commission's filed rate doctrine.[42] Peerless's responsibility for the delivery of traffic under its tariffs ends when it or its VoIP partners terminate traffic to IP-enabled platforms. The Commission therefore should deny the Petition to the extent it would alter existing tariff provisions imposing payment obligations on IXCs and others for traffic delivered to IP-enabled platforms.

C. AT&T Fails to Explain How the End-To-End Approach Applies to All IP-Enabled Platforms or Addresses Administrative Challenges Inherent in Two-Stage Dialing

AT&T argues that "calling card service providers offer no enhanced functionality" and deliver only "ordinary telecommunications services."[43] The breadth of this statement is matched only by its erroneousness. AT&T fails to establish that IP-enabled platforms can never provide enhanced services and therefore can never qualify as end users under the ESP exemption. AT&T cites to the *IP-in-the-Middle Order* in support of its argument,[44] but that decision was limited by the Commission to "an *interexchange service* that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users."[45] AT&T does not even attempt to argue that every IP-

[41] *See, e.g.*, Peerless FCC Tariff No. 4 (issued Sep. 13, 2013).

[42] *See* Peerless Comments at 18 (citing *Evanns v. AT&T Corp.*, 229 F.3d 837, 840 (9th Cir. 2000); *MCI Telecomms. Corp. v. Dominican Commc'ns Corp.*, 984 F. Supp. 185, 189 (S.D.N.Y. 1997)).

[43] AT&T Comments at 6.

[44] *Id.* (citing *IP-in-the-Middle Order* at ¶¶ 12-13).

[45] *IP-in-the-Middle Order* at ¶ 1 (emphasis added). *See AT&T IP Calling Card Order* at ¶ 18 (same).

enabled platform that receives traffic from LECs satisfies any one of these elements, let alone all three.

Accepting AT&T's argument means assuming that all IP-enabled platforms only use ordinary CPE, solely engage in PSTN origination/termination, and undergo no net protocol conversion or offer no enhanced service functionalities. This assumption overlooks both the current realities of IP-enabled platforms and frustrates the purpose of the ESP exemption in facilitating the development of future service offerings.[46] IP-enabled platforms may act on the "format" or "protocol" of transmitted information, thereby providing enhanced services.[47] Calls to IP-enabled platforms also may involve interaction with information stored at the platforms, such as accessing voicemails or obtaining calling card balance information.[48] Thus, despite AT&T's claims, IP-enabled platforms can provide something more than "basic" telecommunication services, rendering them ESP end users for the purpose of assessing switched access charges. The Commission should reject AT&T's unsupported attempt to paint all IP-platforms with the same broad brush and stop further attempts by IXCs and others to escape their tariff payment obligations.

As with Verizon, AT&T fails to explain how the end-to-end approach addresses the administrative challenges inherent in two-stage dialing. While AT&T offers an extended analogy in its comments about a domestic caller using a prepaid calling card service to reach an international destination, it does not consider the fact that no systemic way exists to determine

[46] *See Computer I* at ¶ 11 (stating that the ESP exemption supported the development of "new and improved services and lower prices"); *id.* at ¶ 31 (warning that the absence of the ESP exemption would "inhibit flexibility in the development and dissemination of such valuable offerings . . . contrary to the public interest").

[47] Peerless Comments at 10.

[48] *Id.*

whether a call placed to a particular platform results in a second call.[49] Peerless previously explained that the process for determining whether a called number is associated with a platform is not automatic and ascertaining whether a second call originated from a platform is further complicated when the platform provides multiple functions beyond call re-origination.[50] Many circumstances exist where there is no second call made from a platform at all, such as when a caller dials in to reach a conferencing service, access voicemails, or make a balance inquiry. AT&T does not offer any explanation as to how the end-to-end approach applies to such calls or how it can divine what platform traffic involved a second call.

These administrative challenges underscore that issues concerning the treatment of traffic delivered to IP-enabled platforms for switched access charge purposes are fact-driven and not subject to the one-size-fits-all approach advocated by Verizon and AT&T. Instead of resolving arguments over intercarrier compensation, applying the end-to-end approach in conflict with the realities of two-stage dialing will prolong current litigation and give rise to new disputes. Consequently, the Commission should deny the Petition and confirm that LECs may collect their applicable tariffed switched access charges for terminating traffic to IP-enabled platforms.

D. At a Minimum, the Commission Should Permit LECs to Assess Tandem Terminating Switched Access Charges Where Tandem Functions are Performed in Delivering Traffic to IP-Enabled Platforms

The FCC's key principle in any switched access charge dispute is that carriers should be permitted to bill and be paid for the switching and transport functions they perform.[51] The FCC's rules confirm that "functions provided by a LEC as part of transmitting

[49] *See* AT&T comments at 2-3.

[50] *See* Peerless Comments at 11-12.

[51] *Transformation Order* at ¶ 970; 47 C.F.R. § 51.913(b).

telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of the incumbent local exchange carrier access service."[52] Even AT&T has argued that "when determining what a LEC could charge when it partners with a retail VoIP provider, the Commission [allowed] a LEC to charge for 'functions provided by it and/or by its retail VoIP partner.' This change allowed LEC-VoIP partnerships to charge 'the same intercarrier compensation as incumbent LECs do . . . under comparable circumstances.'"[53]

Yet in this proceeding, AT&T claims in a footnote that, even if the delivery of traffic to IP-enabled platforms involves enhanced services, LECs may *never* assess switched access charges because LECs and their VoIP partners do not provide the "functional equivalent" of end office switching, tandem switching, or any other access function under the Commission's VoIP symmetry rule.[54] The Commission should dismiss this sweeping and baseless assertion, unsupported by any facts.

First, as noted above and as is conceded by Verizon's Petition, the Commission has long held that calls that terminate to an IP-enabled platform involve the performance of a switched access functionality,[55] whether it be end office or tandem functions may depend on the switch hierarchy and the functions performed.[56] But the Commission should not, in this proceeding,

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[52] 47 C.F.R. § 51.913(b).

[53] Comments of AT&T on CenturyLink Petition for Declaratory Ruling, WC Docket No. 10-90, CC Docket No. 01-92, 13 (June 18, 2018) (quoting *Transformation Order* at ¶ 970) ("AT&T CenturyLink PFDR Comments").

[54] AT&T Comments 7, n.27. The VoIP symmetry rule allows LECs to bill and collect for the "functional equivalent" of incumbent LEC services performed not only by the LEC itself, but also for functions performed by the LEC's VoIP partners. 47 C.F.R. § 51.913(b).

[55] *See* Petition at 7, *passim* (requesting that the Commission declare that a LEC may not bill terminating end office switched access charges).

[56] *See id.*

adjudicate whether a LEC billing for calls involving a two-stage platform, whether IP-enabled or otherwise, is performing end office or tandem functions, and therefore would be entitled to only end office or tandem switched access charges.[57]

Second, AT&T's claim that LECs are not entitled to even tandem switched access charges contradicts its position in its recent comments on the CenturyLink Petition for Declaratory Ruling, where it stated that "over-the-top LEC-VoIP partnerships may charge only for tandem switching services."[58] AT&T neither acknowledges nor explains its inconsistent position. AT&T states that LEC-VoIPs just provide "intermediate switching and routing" services between end points of a call.[59] But even if that were true, such intermediate switching and routing functions fall squarely within the definition of tandem switching services, which provide the "connection between an originating telephone call location and the final destination of the call."[60] AT&T cannot deny that a switched access function is performed when calls to an IP-enabled platform are completed in the absence of a direct connection between the IXC and the platform. If LEC-VoIPs are prohibited from charging IXCs anything for the switched access

[57] The same rule would apply for the delivery of over-the-top VoIP traffic. The Commission intended the VoIP symmetry rule to apply to all VoIP traffic, including the delivery of over-the-top VoIP traffic. *See Transformation Order* at ¶¶ 941, 954, n.1942. Calls routed through the public Internet represent a form of Interconnected VoIP service under Commission precedent and there is no reason to exclude such traffic from the Commission's intercarrier compensation regime. *See Extension of the Commission's Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Servs. Providers & Broadband Internet Access Providers*, Report and Order, 27 FCC Rcd 2650, ¶¶ 72-74 (2012)). Although the D.C. Circuit vacated a 2015 Commission declaratory ruling aimed at resolving intercarrier compensation disputes involving end office terminating switched access charges for LEC-VoIP services, the court never indicated that terminating switched access charges could never apply to over-the-top VoIP calls, especially when the LEC-VoIP provides the functions associated with legacy switched access services like Peerless and its VoIP partners. *See* AT&T Comments at 7, n.27 (citing *AT&T Corp. v. FCC*, 841 F.3d 1047 (D.C. Cir. 2016)).

[58] AT&T CenturyLink PFDR Comments at 4.

[59] AT&T Comments at 3. *See* Petition at 5 (stating that LEC-VoIPs "only perform[] intermediate routing of the call on its way to the actual called party").

[60] Newton's Telecom Dictionary, 1088 (25th ed. 2009). *See AT&T Corp. v. Beehive Tel. Co., Inc.*, 2010 U.S. Dist. LEXIS 5804, *6 (D. Ut. Jan. 26, 2010) (noting that tandem charges generally are incurred for connecting and routing traffic between end office switches).

services provided when delivering traffic to IP-enabled platforms, then IXCs would pay no one for these calls. IXCs would receive an unjustified windfall, allowing them to charge customers for calls delivered to IP-enabled platforms without paying for the necessary switching of these calls. There is no reason, either in Commission precedent or logic, why the IXC does not have to pay for this service.[61] Should the Commission conclude at Verizon's request that a LEC is limited to billing for only tandem functions performed, such a decision should apply only prospectively.

III. CONCLUSION

For the foregoing reasons, neither Verizon's Petition nor AT&T's comments in support of the Petition provide any basis for the Commission to overturn its longstanding precedent concluding that IP-enabled platforms represent end users for the purpose of assessing switched access charges. As a result, the Commission should confirm that LECs are entitled to collect

[61] Even if AT&T is correct that LEC-VoIPs delivering traffic to IP-enabled platforms only perform "something akin to a transiting or detariffed IXC service," that does not mean that IXCs and others do not have to pay for that service. AT&T Comments at 7, n.27. The Commission has long held that "[a] purchaser of telecommunications services is not absolved from paying for services rendered solely because the services furnished were not properly tariffed." *America's Choice Commc'ns, Inc. v. LCI Int'l Telecom Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 22494, ¶ 24 (CCB 1996). *See New Valley Corp. v. Pac. Bell*, Memorandum Opinion and Order, 8 FCC Rcd 8126, ¶ 8 (CCB 1993) (finding no basis in precedent "for the conclusion that a customer may be exempt from paying for services provided by a carrier if those services were not properly encompassed by the carrier's tariff"). IXCs therefore owe some compensation to LECs for delivering traffic to IP-enabled platforms, even if such service is not covered by tariff.

their applicable tariffed terminating switched access charges for calls delivered to IP-enabled platforms.

Respectfully submitted,

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